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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JESSE CASTILLO,) Case No. 23-cv-1619
)
Plaintiff,)
)
-vs-)

**COMPLAINT FOR DECLARATORY
RELIEF PURSUANT TO
28 U.S.C. § 2201, et seq.**

THE PATRIOT LAW FIRM CORPORATION,))
a Nevada corporation; ATKINSON, WATKINS)
& HOFFMAN, LLP dba BATTLE BORN)
INJURY LAWYERS, a Nevada limited liability)
partnership; ROE CORPORATIONS 1-10; and)
JOHN DOES 11-20,)
Defendants.)

Plaintiff, through counsel, for his cause of action, alleges as follows:

NATURE OF CASE

This case concerns a dispute over the amount of attorney's fees and costs that may permissibly be charged to a paraplegic plaintiff under Nevada law following a settlement in a medical malpractice case. Plaintiff Jesse Castillo is a resident of Kingman, Arizona. The defendants are two Nevada law firms. The cause of action arose at a Las Vegas hospital. The case was litigated and settled in the District Court of Clark County. The dispute involves application of Nevada statutory law to fee agreements drafted by the defendant law firms.

PARTIES

1. Plaintiff Jesse Castillo ("Mr. Castillo") is a citizen and resident of Kingman, Mohave County, Arizona.

1 2. Defendant THE PATRIOT LAW FIRM CORPORATION (“PLFC”) is a Nevada
2 corporation and a law firm that is doing business, and has been doing business at all times relevant
3 to this complaint, in Clark County, Nevada.

4 3. Defendant ATKINSON, WATKINS & HOFFMAN, LLP dba BATTLE BORN
5 INJURY LAWYERS (“AWH”) is a Nevada limited liability partnership and a law firm that is
6 doing business, and has been doing business at all times relevant to this complaint, in Clark
7 County, Nevada.

8 JURISDICTION AND VENUE

9 4. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1332(a)(1)
10 because the amount in controversy, exclusive of interest and costs, exceeds \$75,000 and there is
11 complete diversity of citizenship between Jesse Castillo, who is a citizen of Arizona, and the
12 defendants, that are citizens of Nevada.

13 5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) and (2) in that
14 both defendants reside in the District of Nevada and a substantial part of the events giving rise to
15 the subject of the action occurred in the District of Nevada.

16 FACTS

17 6. Mr. Castillo asserted claims against certain providers of health care in Clark
18 County, Nevada for acts and omissions constituting professional negligence that occurred on or
19 about September 1, 2019 at a hospital in Las Vegas.

20 7. The acts and omissions of professional negligence by the accused providers of
21 health care left Mr. Castillo paraplegic.

22 8. In early 2020, Mr. Castillo sought to retain Defendant PLFC to serve as his
23 attorney to prosecute claims for professional negligence against those providers of health care
24 whose acts and omissions were believed to have caused Mr. Castillo to become paraplegic.

25 9. On or about April 17, 2020, Defendant PLFC presented a contingency fee contract
26 to Mr. Castillo and Mr. Castillo signed the contract on April 23, 2020.

27 10. It is unknown when, if at all, Defendant PLFC signed the contingency fee contract
28 that Mr. Castillo had signed, although, in late September 2023, after the dispute that is the subject

1 of this action had arisen, Defendant PLFC produced a copy of the contingency fee contract
2 bearing a signature of Defendant PLFC dated April 16, 2020.

3 11. At the time Defendant PLFC produced a copy of the contingency fee contract to
4 Mr. Castillo and Mr. Castillo signed the contingency fee contract, there was in force and effect
5 Nevada Revised Statute 7.095, which provided as follows:

6 1. An attorney shall not contract for or collect a fee contingent on the
7 amount of recovery for representing a person seeking damages in
8 connection with an action for injury or death against a provider of health
care based upon professional negligence in excess of:

9 (a) Forty percent of the first \$50,000 recovered;

10 (b) Thirty-three and one-third percent of the next \$50,000 recovered;

11 (c) Twenty-five percent of the next \$500,000 recovered; and

12 (d) Fifteen percent of the amount of recovery that exceeds \$600,000.

13 2. The limitations set forth in subsection 1 apply to all forms of recovery,
14 including, without limitation, settlement, arbitration and judgment.

15 3. For the purposes of this section, "recovered" means the net sum recovered
16 by the plaintiff after deducting any disbursements or costs incurred in
17 connection with the prosecution or settlement of the claim. Costs of medical
18 care incurred by the plaintiff and general and administrative expenses
19 incurred by the office of the attorney are not deductible disbursements or
costs.

20 12. The contingency fee agreement presented by Defendant PLFC to Mr. Castillo
21 provided, in part:

22 **2. Attorney shall be paid the greater of: a) 33.3% of any money**
23 **recovered in this matter if settled before filing a lawsuit. or b) 40%**
24 **of the settlement/verdict if the matter is settled after a lawsuit is filed.**
25 **45% if settled within 45 days of trial and 50% if any appeal is**
involved. The fee percentage is calculated prior to any deductions
for attorneys Costs. [sic]

26 13. On August 17, 2020, the State Bar of Nevada issued a ruling in a disciplinary
27 proceeding finding that the provisions of N.R.S. § 7.095 could not be waived and that a
28

1 contingency fee contract providing for a greater fee violated Rule 1.5 of the Rules of Professional
2 Conduct applicable to attorneys practicing in Nevada.

3 14. On or about October 5, 2022, Defendant PLFC or Defendant AWH, or both,
4 presented an “ADDENDUM TO MEDICAL MALPRACTICE FEE AGREEMENT” and Mr.
5 Castillo signed the contract, which provides, in part:

6 **ADDENDUM TO MEDICAL MALPRACTICE FEE AGREEMENT**

7 **THE FEE PROVISION SET FORTH IN THE FOREGOING**
8 **CONTRACT WILL BE APPLICABLE UNLESS THE STATUTES**
9 **CURRENTLY GOVERNING MEDICAL MALPRACTICE FEES**
10 **ARE UPHELD BY THE NEVADA SUPREME COURT OR THE**
11 **UNITED STATES FEDERAL COURTS AND IT IS DETERMINED**
TBAT ITS PROVISIONS CONCERNING FEES CANNOT BE
WAIVED.

12 **THE UNDERSIGNED, AFTER FULL EXPLANATION, IS**
13 **VOLUNTARILY WAIVING THE RECENTLY REVISED NEVADA**
14 **STATUTES GOVERNING MEDICAL MALPRACTICE CASES IN**
ENVADA, SPECIFICALLY, N.R.S. 7.095 AS IT APPLIES TO
ATTORNEYS' FEES.

15 **IN THE EVENT THAT N.R.S. 7.095 IS UPHELD AND WAIVER OF**
16 **THIS STATUTE IS DISALLOWED, THE FEE AGREEMENT WILL**
17 **BE AS PRESCRIBED IN N.R.S. 7.095, AS FOLLOWS:**

- 18 1. **40% OF THE FIRST \$50,000;**
19 2. **1/3 OF THE NEXT \$50,000;**
20 3. **25% OF THE NEXT \$500,000; AND**
21 4. **15% OF THE AMOUNT OF RECOVERY THAT EXCEEDS**
\$600,000.

22 **THE PERCENTAGES SET FORTH ABOVE AND IN THE FEE**
23 **AGREEMENT ARE CALCUALTED AFTER DEDUCTION OF**
COSTS INCURRED IN PROSECUTING THIS CLAIM.

24 **IN THE EVENT THAT N.R.S. 7.095 IS UPHELD BY THE COURTS,**
25 **ATTORNEYS SPECIFICALLY RESERVE THE RIGHT TO**
26 **WITHDRAW FROM FURTHER REPRESENTATION OF**
CLIENTS. [sic]

27 15. The “ADDENDUM TO MEDICAL MALPRACTICE FEE AGREEMENT” is not
28 signed by either Defendant PLFC or Defendant AWH.

1 16. On or about October 8, 2022, Defendant AWH presented a contingency fee
2 contract to Mr. Castillo and Mr. Castillo signed the contract.

3 17. The contingency fee contract presented by Defendant AWH provides, in part, as
4 follows:

5 The amount of attorneys' fees for the legal services provided under this
6 Agreement will be:

7 **40 percent** (%) of the total amount of any monies received by compromise or
8 settlement prior to commencement of a lawsuit, or any appeal to the Nevada
9 Supreme Court, Nevada Court of Appeals, federal appellate court, or any
administrative appellate process or similar action seeking to vacate, amend,
and/or enforce any administrative or arbitration order or verdict.

10 **50 percent** (%) of the total amount of any monies received after filing of an
11 appeal to the Nevada Supreme Court, Nevada Court of Appeals, federal
12 appellate court, or any administrative appellate process or similar action.

13

14 **Attorneys' fees will be calculated based on the total monies received**
15 **before costs are deducted.** That is, the costs advanced by the Firm will be
paid from the Client's portion of the monies received and will not be
deducted from the amount of attorneys' fee.

16 18. It is unknown when, if at all, Defendant AWH signed the contingency fee contract
17 that Mr. Castillo had signed.

18 19. Defendant PLFC and Defendant AWH thereafter purported to act as co-counsel
19 for Mr. Castillo in Case No. A-20-820371-C, which had been commenced on August 28, 2020,
20 in the District Court of Clark County, Nevada, Eighth Judicial District, by Defendant PLFC.

21 20. Case No. A-20-820-371-C was set to begin trial on August 21, 2023, but on or
22 about July 17, 2023, a confidential settlement was reached, and the state court action is now
23 concluded.

24 21. Thereafter, Defendant PLFC and Defendant AWH have presented drafts of
25 disbursement agreements to Mr. Castillo that purport to charge attorney's fees of forty-five
26 percent (45%) of the gross recovery, rather than calculating attorney's fees in the percentages
27 provided in N.R.S. § 7.095 and rather than applying the fee percentages to the net recovery, as
28 provided in N.R.S. § 7.095.

1 22. Mr. Castillo disputes the attorney's fee and litigation cost calculation provided in
2 the proposed disbursements presented by defendants and believes the fee and cost calculation
3 should be made as provided in N.R.S. § 7.095.

4 23. The parties have made partial distribution of the gross settlement proceeds to both
5 Mr. Castillo and to the defendants, but there remains a dispute concerning attorney's fees and
6 litigation costs that involves an amount well in excess of the jurisdictional limit in 28 U.S.C. §
7 1332(a). That amount is believed to remain in the trust account(s) of one or both defendants.

8 CLAIM FOR DECLARATORY RELIEF UNDER 28 U.S.C. 2201, et seq.

9 24. Mr. Castillo incorporates by this reference all allegations of the preceding
10 paragraphs the same as if set forth herein in full.

11 25. An actual, live, and present controversy exists between the parties with respect to
12 calculation of the attorney's fees and litigation costs to which defendants are entitled.

13 26. The calculation of attorney's fees and litigation costs affects the amount of the net
14 recovery that Mr. Castillo is entitled to receive, and the amount remaining in dispute substantially
15 exceeds the jurisdictional limit in 28 U.S.C. § 1332(a).

16 27. Resolution of this controversy requires a determination and declaration of the
17 rights and legal relations of the parties, specifically, their contractual rights and legal relations in
18 and to attorney's fees and litigation costs as calculated under Nevada statutory law.

19 28. Mr. Castillo seeks a declaration of his legal rights under the contingency fee
20 contracts described above, as those agreements are affected and limited by Nevada statutory law.

21 29. Mr. Castillo further seeks relief under 28 U.S.C. § 2202 in the form of a judgment
22 ordering defendants, and each of them, to pay to him the net proceeds of settlement, as that amount
23 is determined by proper application of Nevada statutory law.

24 WHEREFORE, Mr. Castillo respectfully prays the Court enter its orders:

25 A. Declaring his rights under the parties' contingency fee contracts as limited and
26 affected by Nevada law;

27 B. Entering judgment in his favor and against defendants in such amount as Mr.
28 Castillo is entitled under Nevada law; and

1 C. For his attorney's fees and costs of suit; and

2 D. For such other and further relief as the Court deems proper under the
3 circumstances.

4 Respectfully submitted this 6th day of October, 2023.

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6
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